

Summary
2007 OMB Legislative Session

HB 1101 – 46-02-20 – Corrects the names of State College of Science and Valley City State University; Exempts NDSU from this statute; Removes the restriction for printing process color for Central Duplicating Services and state agencies, and allows printing on paper larger than 11 x 17 unless done a plotter. (Superseded by SB 2094.)

HB 1322 – 32-12.2 - Directs OMB to establish guidelines for indemnification and insurance provisions in contracts in consultation with representatives from state agencies, the insurance industry, and the business community. The indemnification must be for vicarious liability unless OMB determines that a more stringent indemnification provision is appropriate. The failure of the State to comply with Subsection 2 of the bill does not void any part of a contract.

HB 1483 – 54-44.4-07 - Requires the State to purchase environmentally preferable products including soybean ink, recycled paper, and biobased products, whenever practicable. OMB shall also, in coordination with the State Board of Higher Education, develop guidelines for a biobased procurement program. The bill becomes effective July 1, 2008.

SB 2093

Section 1 – NDCC 11-10-16. Unless the expense is incurred on a purchasing card, the individual who claims travel reimbursement must submit an itemized statement to the appropriate official.

Section 2 – 44-08-04, Subsection 2. Travel within the State must be reimbursed at the rates shown.

Section 3 – 44-08—04.4 – The State may incur travel-related expenses in advance of the approved travel to meet necessary deadlines or to obtain low rates.

Section 4 – 44-08-05.1

-Requires that any person who has authority to approve payments for expenditure of public funds, including travel, certify that the expenditure is lawful and contains no false claims, and that travel reimbursement expenses are due to the person seeking reimbursement.

-Authorizes OMB, the State Board of High Education, the governing body of any political subdivision, and the board of any school district to establish and administer a purchasing card system.

OMB may review and approve purchasing card payments and OMB may designate the state agencies that are required to use the purchasing card system.

-Any public officer or employee who fraudulently uses a purchasing card or knowingly approves a payment for false or unlawful claims may be subject to criminal prosecution, or may be personally liable for any funds improperly expended. Requires any public officer or employee or any individual who has knowledge of an actual or possible violation of this section to report it to the attorney general or the appropriate states attorney for action.

Section 5 – 54-44.4-11 – Moves OMB's authority to establish a purchasing card system from the small purchases section NDCC 44-08-05.1

SB 2094

Section 1 – 46-02-15 - changes "printing done in this state" to "printing awarded to a resident North Dakota printer"

Section 2 – 46-02-20 – All provisions same as HB 1101 except it restricts Central Duplicating Services and state agencies printing of process color to that done on computer printers on paper less than 11 x 17 inches and fewer than 500 total image pages.

**Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007**

HOUSE BILL NO. 1322
(Representatives Keiser, Clark)
(Senators Cook, Potter)

AN ACT to create and enact a new section to chapter 32-12.2 of the North Dakota Century Code, relating to indemnification and insurance provisions in state contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 32-12.2 of the North Dakota Century Code is created and enacted as follows:

Indemnification and insurance requirements in state contracts.

1. The director of the office of management and budget shall establish guidelines for indemnification and insurance provisions in contracts that may be entered by an executive branch state agency. The director shall consult with representatives of executive branch state agencies, the insurance industry, and the business community to establish and revise the guidelines and provisions. The guidelines must establish procedures for determining the appropriate indemnification and insurance provisions in contracts.
2. If a contract for services requires a provision for indemnification, the contract must require the contractor to indemnify the state and its agencies, officers, and employees for vicarious liability, but may not require indemnification for the contributory negligence, comparative degree of fault, sole negligence, or intentional misconduct of the state or its agencies, officers, and employees, unless the director of the office of management and budget or the director's designee determines a more stringent indemnification provision is appropriate. If indemnification is required, the contract must require that the state be endorsed on the contractor's commercial general liability policy as an additional insured or must require an equivalent form of protection for the state.
3. This section does not apply to a contract between an executive branch state agency and another person that is the owner of private property that is being used to accommodate a state construction project.
4. The failure of the state to comply with subsection 2 does not void any part of a contract.

**Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007**

HOUSE BILL NO. 1483
(Representatives Gulleason, Ekstrom, Mueller, Hawken)
(Senators Erbele, Tallackson)

AN ACT to amend and reenact section 54-44.4-07 of the North Dakota Century Code, relating to procurement of environmentally preferable products; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-44.4-07 of the North Dakota Century Code is amended and reenacted as follows:

54-44.4-07. ~~Specification for paper products and inks~~ Procurement of environmentally preferable products.

- 1.** The office of management and budget, the institutions of higher education, and any other state agency or institution that has authority to purchase products, are encouraged, ~~whenever possible when~~ to purchase environmentally preferable products.
- a.** Where practicable, specifications for purchasing newsprint printing services, to should specify the use of soybean-based ink. The North Dakota soybean council and the agriculture commissioner shall assist the office of management and budget in locating suppliers of soybean-based inks and in collecting data on the purchase of soybean-based inks.
- b.** In requesting bids for paper products, the office of management and budget must request information on the recycled content of such products.
- c.** Where practicable, biobased products should be specified.
- 2.** The office of management and budget, in coordination with the state board of higher education, shall develop guidelines for a biobased procurement program.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on July 1, 2008.

**Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007**

SENATE BILL NO. 2093
(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

AN ACT to amend and reenact section 11-10-16, subsection 2 of section 44-08-04, and sections 44-08-04.4, 44-08-05.1, and 54-44.4-11 of the North Dakota Century Code, relating to payment of travel expenses of state and county officers and employees and purchasing card authority; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-10-16 of the North Dakota Century Code is amended and reenacted as follows:

11-10-16. Statement to claim mileage. ~~Before~~ Unless the expense was incurred by the use of a purchasing card, before an allowance for mileage or travel expense may be paid by a county, the ~~person~~ individual for whose travel the claim is made shall file with the county auditor an itemized statement verified by affidavit showing the number of miles traveled, the mode of travel, the days of traveling, the purpose of the travel, and the destination. ~~Before a claim for mileage is allowed or paid, the claimant shall file the statement and affidavit with the board of county commissioners which shall decide whether to allow the claim.~~

SECTION 2. AMENDMENT. Subsection 2 of section 44-08-04 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~Expenses for~~ For travel within the state ~~must be reimbursed at~~ the following rates for each quarter of any twenty-four-hour period must be used:
- a. First quarter is from six a.m. to twelve noon and the sum must be five dollars. First quarter reimbursement may not be made if travel began after seven a.m.
 - b. Second quarter is from twelve noon to six p.m. and the sum must be seven dollars and fifty cents.
 - c. Third quarter is from six p.m. to twelve midnight and the sum must be twelve dollars and fifty cents.
 - d. Fourth quarter is from twelve midnight to six a.m. and the sum must be the actual lodging expenses not to exceed fifty dollars plus any additional applicable state or local taxes. A political subdivision may reimburse an elective or appointive officer, employee, representative, or agent for actual lodging expenses.

SECTION 3. AMENDMENT. Section 44-08-04.4 of the North Dakota Century Code is amended and reenacted as follows:

44-08-04.4. Prepayment of travel expenses of state officers and employees. Any travel expense, including airline tickets and registration fees, that must be incurred more than five weeks in advance of approved travel of to meet necessary deadlines or to obtain low rates, may be purchased by the state or any elected or appointed officer, employee, representative, or agent of this state to meet necessary deadlines or to obtain low rates must be purchased prepaid by the state. No state entity may require an officer, employee, representative, or agent of the state to pay these expenses.

SECTION 4. AMENDMENT. Section 44-08-05.1 of the North Dakota Century Code is amended and reenacted as follows:

44-08-05.1. Payments - Requirements for approval Purchasing card authority - Penalty - Action for violations.

1. Any public officer or employee who has the power to approve a payment for a department, agency, or institution for travel expenses or any other state expenditure of public funds shall determine before approving the payment:
4. a. That the expenditure for travel or other expenditures were for lawful and official purposes.
2. b. If for employee travel reimbursement, that the travel actually occurred and that the sums claimed for travel expenses are actually due the individual who is seeking reimbursement, allowance, or payment.
3. c. If the payment is for expenditure other than travel expense, that the expenditure is lawful and that the payment contains no false claims.

~~For purchases made with the use of a purchasing card authorized under section 54-44.4-11, an~~

2. The director of the office of management and budget, the state board of higher education, the governing body of any political subdivision, and the board of any school district may establish and administer a purchasing card system for use by its officers, employees, representatives, or agents. If the director of the office of management and budget establishes a cooperative purchasing contract under section 54-44.4-13, each participating government entity is responsible for its purchasing card system.
3. An employee of the office of management and budget designated by the director of the office of management and budget, on behalf of all state agencies, may review and approve payments under this section made with a purchasing card and make payments pursuant thereto. The director of the office of management and budget may designate the state agencies that are required to use the purchasing card system.
4. Any public officer or employee who willfully fraudulently uses a purchasing card or knowingly approves a payment with knowledge it contains for false or unlawful claims or that it which does not otherwise meet the requirements of this section for approval is guilty of theft and punishable under chapter 12-1-23 may be subject to criminal prosecution under title 12.1. Any public officer or employee who, without the use of ordinary care and diligence, negligently uses a purchasing card or approves a payment for a department, agency, or institution containing false or unlawful claims or which does not otherwise meet the requirements of this section for approval is personally liable for any funds improperly expended. The director of the office of management and budget, members of the office of the budget, state auditor Any public officer, employee, or any other person individual who has knowledge of an actual or possible violation of this section shall make such that information known to the attorney general or the appropriate state's attorney. The attorney general or appropriate state's attorney shall investigate any alleged violation and, if a violation appears to exist, shall prosecute under chapter 12-1-23. If there is probable cause to believe that a violation has occurred, the attorney general or appropriate state's attorney shall initiate a criminal prosecution under title 12.1 or bring a civil suit against the public officer or employee for the recovery of such the funds as may actually have been improperly paid against the payee and officer or employee who approved the payment in violation of the above requirements or shall bring both such criminal action and civil suit. The officer or employee who approves any payment negligently has the right of subrogation against the payee of the payment in the event public funds have been improperly paid to the payee, or may initiate a prosecution and a civil suit.

SECTION 5. AMENDMENT. Section 54-44.4-11 of the North Dakota Century Code is amended and reenacted as follows:

54-44.4-11. Small purchases.

1. A procurement not exceeding the amount established by written directive of the director of the office of management and budget ~~under section 54-44.4-02~~ or by the state board of higher education under subsection 5 of section 15-10-17 may be made in accordance with small purchase procedures.
2. A small purchase need not be made through competitive sealed bidding or competitive sealed proposals. However, small purchases must be made with competition that is practicable under the circumstances.
3. Procurement requirements may not be artificially divided as to constitute a small purchase under this section.
4. ~~The director of the office of management and budget may establish and administer, including by contract with a provider, a system of procurement for commodities agencies are authorized to purchase under this section. If the director establishes a purchasing card system under this subsection, the director may designate which agencies are required to use the purchasing card system for purchasing commodities under this section.~~

**Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007**

SENATE BILL NO. 2094
(Industry, Business and Labor Committee)
(At the request of the Office of Management and Budget)

AN ACT to amend and reenact sections 46-02-15 and 46-02-20 of the North Dakota Century Code, relating to resident bidder preference for public printing and services provided by in-plant print shops.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 46-02-15 of the North Dakota Century Code is amended and reenacted as follows:

46-02-15. ~~Where public~~ **Public printing shall be done** resident bidder preference. ~~Where~~ If practicable, all state, county, and other political subdivision public printing, binding, and blank book manufacturing, blanks, and other printed stationery; must be done in this state awarded to a resident North Dakota bidder as defined in section 44-08-02.

SECTION 2. AMENDMENT. Section 46-02-20 of the North Dakota Century Code is amended and reenacted as follows:

46-02-20. In-plant print shops. Central duplicating services of the office of management and budget or by departments, institutions, state offices, and printing services under the jurisdiction of the board of higher education, with the exception of the state ~~school~~ college of science, the university of North Dakota, and the North Dakota state university of North Dakota-Valley City, and Valley City state university, may not provide the following services: printing or duplicating of all coated stock; continuous forms; snap-out forms; envelopes over twenty thousand; process color, except for jobs generated on computer printers which do not exceed eleven inches [27.94 centimeters] by seventeen inches [43.18 centimeters] and five hundred total image pages; and print or duplicate paper larger than eleven inches [27.94 centimeters] by seventeen inches [43.18 centimeters], excluding work done on plotters.

